

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ANDRES NAVARRO,
Petitioner,
v.
R.T.C. GROUNDS, War
Responder

Case No. 5:14-cv-01336-EJD

ORDER DENYING CERTIFICATE OF APPEALABILITY

In an order filed on August 28, 2015, this court found that Petitioner Andres Navarro’s (“Petitioner”) petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 was untimely and that he was not entitled equitable tolling of the statute of limitations. The court granted Respondent’s motion to dismiss on those grounds and entered judgment, from which Petitioner appealed. On November 3, 2015, the Ninth Circuit Court of Appeals remanded the action for the limited purpose of granting or denying a certificate of appealability (“COA”).

When, as here, “the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue (and an appeal of the district court’s order may be taken) if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 478 (2000). Having reviewed the record, the court finds that “jurists of reason” could not find debatable either the application of the statute of limitations or the rejection of equitable tolling. As discussed in the order, Petitioner admitted that his petition was not timely filed, and he did not present circumstances sufficient to justify a tolling

1 of the limitations period.

2 Accordingly, the court DENIES a certificate of appealability.

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4 **IT IS SO ORDERED.**

5 Dated: November 5, 2015

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EDWARD J. DAVILA
United States District Judge

United States District Court
Northern District of California